

1 time it was incorporated, if you recall.

2 A In 1998? Or, are you talking
3 about in 1999 prior to the auction?

4 Q Well, either one. Let's start
5 with 1998. At the time of its incorporation,
6 what was the general ownership structure?

7 A In 1998, the only owner was
8 myself, 800,000 shares.

9 Q Okay. And this is even though
10 there were other individuals that participated
11 in the formation of PCSI?

12 A Yes. Like -- yes.

13 Q Okay. That's in 1998. Did you
14 mention the number of shares that were issued
15 at that point?

16 A 800,000.

17 Q At the time of its incorporation?

18 A I'd have to go back -- yes, I'd
19 have to go back and take a look at how -- how
20 we did it, but that -- generally, that was,
21 you know, that was --

22 Q Yes, just to the best of your

1 recollection.

2 A Yes.

3 Q I know it was a while ago. Okay.
4 And then in 1999 what was it?

5 A Well, in 1999 we had sold Series A
6 preferred stock, so there was investors like
7 Chandu Patel and others who had purchases
8 Series A preferred.

9 And in 1998, a number of common
10 stock was issued to -- by agreement with Jerry
11 Setka. I believe he didn't actually receive
12 the stock until 1999, but the agreement was in
13 1998.

14 So, at that point I believe -- and
15 then there was a number of individuals that
16 held common shares, it's a handful, in 1999.

17 Q 1999?

18 A Yes.

19 Q Okay. But in 1998 you issued
20 addition shares in addition to the 800,000 you
21 have just told us about, or they had not been
22 issued at that point?

1 A No, in '98 -- yes, you're correct.
2 It was not issued till '99.

3 Q All right. So, in 1998, you were
4 the only shareholder?

5 A I'd have to go back and look at
6 the records.

7 Q All right. To the best of your
8 recollection.

9 A To the best of my recollection,
10 but the documents that we submitted will have
11 that in detail.

12 Q In 1999, you've indicated that
13 additional shares were issued or were --

14 A That is correct.

15 Q Okay. Can you give us the top
16 three or four shareholders at that point?

17 A Myself, Jerry Setka, and on the
18 preferred -- Series A preferred stock, it
19 would have been Chandu Patel.

20 Q Can you give us approximately what
21 the ownership interests were for each of you,
22 each of the three?

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1 A Okay. Can you be more specific,
2 because now we're getting into the area of
3 economic interest versus voting stock in the
4 company. And I know we've submitted this to
5 you several times, and I could do the math
6 pretty quick.

7 Q Can you give us both of those? In
8 other words --

9 A Okay.

10 Q -- to the best of your knowledge
11 of those interests.

12 A Voting -- I would have been around
13 78 percent. Jerry Setka would have been
14 around 14 percent. And then the other
15 individuals would have made up the difference.

16 Economic interest would have been
17 diluted based on how many shares of preferred
18 stock that was sold, I believe, was 200 and
19 some-odd thousand, so that would have diluted
20 the economic interest down maybe by ten
21 percent, 15 percent.

22 Q So, in other words, you would

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1 still have had your 800,000 shares -- and I'm
2 just -- I'm paraphrasing what you told us, and
3 tell me if I'm incorrect.

4 And then you had issued an
5 additional 200,000, is that correct, in '99?

6 A Of common?

7 Q Whatever. Diluting -- what we
8 were talking about right now is the economic
9 interest, right? So, in terms of economic
10 ownership interest, you had your original
11 800,000 --

12 A Yes.

13 Q -- in '98. '99 you issued an
14 additional 200,000, and correct me if I'm
15 misstating it. And that additional 200,000
16 diluted your ownership, your economic
17 ownership interest, is that what you've
18 testified?

19 A I think you missed one.

20 Q Okay.

21 A 800,000 and there was 190,000 that
22 went -- of common that went to Jerry Setka

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1 that represented his percentages that I just
2 gave you.

3 Q Okay.

4 A I mean, approximate. And then in
5 1999 we issued Series A preferred stock which
6 has a different voting right than common, but
7 it factors into the economic interest based on
8 its conversion.

9 Q Okay. So the percentages you were
10 giving me where you said you had 78 percent,
11 Setka had 14 percent, and the other
12 individuals had the remaining percentage,
13 that's the voting interest or the economic
14 interest?

15 A Combining all the -- when you
16 bring in the preferred -- the preferred
17 shares, you're talking about the economic
18 interest.

19 Q Right.

20 A The preferred stock does not have
21 voting rights.

22 Q Okay.

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1 A So, the common is your vote, which
2 is the first set of numbers, and then when you
3 add in the preferred it dilutes the economic
4 interest but not the voting interest.

5 Q Okay. All right. Let's move on
6 to 2000. In 2000, did PCSI participate in the
7 FCC auction?

8 A Yes, it did.

9 Q Okay. And what steps did PCSI
10 make to participate in the auction?

11 A Could you be more specific?

12 Q How did the company arrange to
13 participate in the auction? Did you have
14 individuals make filings for you? If so, who?
15 Did you require additional funds and if so,
16 where did you get those funds? Those kind of
17 arrangements, that's what I'm talking about.

18 Well, maybe it's easier if we do
19 it this way: Did PCSI participate in an FCC
20 auction in the year 2000?

21 A Yes. Yes, we did.

22 Q Okay. Do you remember the auction

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1 number?

2 A 34.

3 Q Okay. And as a result of its
4 participation, did it win some licenses?

5 A Yes, it did.

6 Q Okay. Can you tell us how many
7 licenses it won?

8 A 38. I'd have to -- I'd have to --
9 the number 38 comes to mind, but --

10 Q Okay.

11 A -- I'd have to look at the
12 numbers.

13 Q And those are economic area
14 licenses?

15 A That is correct.

16 Q Okay. Now, in order to
17 participate in that auction, was there a
18 downpayment required by the FCC?

19 A Let me back up. Yes, there was a
20 downpayment that was required.

21 Q Okay.

22 A Five percent -- bear with me a

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1 minute. It's been a while. There is -- there
2 is initial payment to the FCC that set your
3 qualifications to participate in the auction,
4 which we arranged with Chandu Patel, like
5 \$1.325 million that set the, you know, how
6 many licenses that we could bid on. It set
7 our eligibility requirement in the auction.

8 Q And was that \$1.325 in addition to
9 the money that he'd already invested?

10 A That is correct.

11 Q And what form did that money come
12 in from him?

13 A It was a loan to PAI.

14 Q Okay. And -- I'm sorry. Go
15 ahead. Finish. Or, are you finished with
16 your answer?

17 A Yes.

18 Q Okay. Can you tell us what PAI
19 is, for the record.

20 A Yes. Preferred Acquisitions,
21 Inc., you know, is a subsidiary of Preferred,
22 which we formed to specifically to participate

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1 in this auction.

2 Q Okay. And when you say "we," who
3 is "we"?

4 A The company, PCSI.

5 Q All right. And at that point in
6 2000, who did the company consist of?

7 A At the time in 2000 the -- we just
8 went through the ownership, but there's a
9 number of different owners. Jerry Setka and
10 myself are the two largest common shareholders
11 and voteholders in the company.

12 And Michelle and I were the two
13 directors of the company, or two officers. I
14 was the sole director. That's -- when I speak
15 of the "we," I speak of the collective, we,
16 the company.

17 Q So, in other words, Jerry Setka,
18 yourself and Michelle Bishop. What about
19 Jerry Bishop? Oh, I'm sorry. Excuse me. Jay
20 Bishop.

21 A Jay Bishop at the time was a
22 consultant to Preferred.

1 Q Okay.

2 A And his --

3 Q Okay.

4 A He did not own any stock, whether
5 it was preferred or common.

6 Q Okay. Was the loan from Chandu
7 Patel evidenced by some document and if so,
8 what document?

9 A I'm sorry. Can you repeat that.

10 Q Did Chandu Patel receive some
11 ownership interest that was represented in
12 writing in any form as a result of --

13 A No.

14 Q -- his -- No, he did not?

15 A No.

16 Q Is there some reason why not?

17 A It was -- he loaned money to
18 Preferred -- or, excuse me, to PAI. It was
19 not a stock transaction.

20 Q And did not ask for any kind of
21 security or note in return?

22 A I'd have to go back and take a

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1 look, and I can certainly supplement it. It's
2 been a while since I've looked at the
3 document, but the -- there was a series of
4 transactions with Chandu Patel.

5 The first one was done with ADS
6 Partners, which is a partnership of his
7 children, Apurva, Divya and Sonal who owned
8 the \$1.325 million. And with that it was a
9 loan along with a pledge agreement, stock
10 pledge agreement.

11 And at the conclusion of the
12 auction with -- making the 20 percent
13 downpayment. There was another \$5,032,000
14 that was a loan, I believe from Chandu Patel,
15 although I have to go and take a look. It may
16 have been ADS Partners. I get confused with
17 that transaction.

18 And there was a corporate
19 guarantee on that loan, and then the final
20 payment was 24 million and change that was
21 done in three separate wires, I believe, and--

22 Q I'm sorry. Tell me that amount

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1 again.

2 A 24 million and change that -- I'd
3 have to look at the numbers. So, Chandu had
4 -- there was three loan agreements. The first
5 one was ADS Partners with and pledge
6 agreement, and then the other two were subject
7 to a corporate guarantee.

8 Q Okay. Can you tell us what the
9 pledge agreement consisted of?

10 A Can you be specific what you --

11 Q In other words, what form -- or,
12 describe to us what that pledge agreement
13 consisted of.

14 A The parent company was Preferred,
15 which owned a hundred percent of the stock and
16 PAI was pledging that as -- and putting them
17 in a secured creditor position and then in the
18 event of a default on the loan, they had a
19 right to call in the note and if it wasn't
20 paid, then he had the ability to go after the
21 -- basically the stock, a hundred percent of
22 the stock of PAI was pledged.

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1 Q Okay. And I -- I'm sorry, finish
2 your answer.

3 A You know, it was the pledge
4 agreement, it was backing up and securing the
5 note.

6 Q Okay. And where is that
7 agreement? Is there a copy of that agreement?

8 A There are several copies of that
9 agreement.

10 Q Do you have available to you a
11 copy of the agreement?

12 A Yes.

13 Q Did you review it in preparation
14 for the deposition? I'm not trying to confuse
15 you. I'm just --

16 A No, I did not, but I have read it
17 many times and --

18 Q Do we have that?

19 MS. SINGH: Did you attach a copy
20 of that to your auction filings at all?

21 THE WITNESS: What auction filings
22 are you --

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1 MS. SINGH: Auction 34 filings.

2 THE WITNESS: Oh, yes. Yes, it's
3 part of that and it also should be a part of
4 discovery, documents that you guys requested.

5 BY MR. OSHINSKY:

6 Q Okay. If it turns out that it's
7 not, I would ask you to do the same thing I
8 asked you about in regard to the business
9 plan.

10 A Yes.

11 Q Simply supply it to your attorney
12 so that he can give it to us.

13 A Right.

14 Q There were very voluminous numbers
15 of documents produced and, you know, clearly,
16 there can be -- anything could be lost in the
17 amount of documents.

18 A Right.

19 Q So, we're simply asking that you,
20 you know, get a copy of that to your attorney
21 and then he can supply that to us.

22 So there was the pledge agreement.

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1 Then you indicated -- and that was for the
2 1.325 million, and then there was the
3 additional 5 million from Chandu, and you said
4 that was a corporate guarantee.

5 Could you describe that corporate
6 guarantee for us.

7 A Gosh, I don't know how to describe
8 that. The corporation was guaranteeing
9 payment of the note, so they had a standard,
10 you know, guarantee letter.

11 Q And there was a note evidencing
12 this -- the payment of 5 million from Chandu
13 Patel?

14 A I'm sorry. Repeat that.

15 Q Was there a note produced that
16 Chandu --

17 A Yes, there is -- there's three
18 separate notes.

19 Q Okay.

20 A As I said earlier, there's the
21 1.325, there is a promissory note for the
22 5,032,000.

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1 Q Okay.

2 A The pledge agreement went with the
3 first one.

4 Q Right.

5 A Corporate guarantee with the
6 second.

7 Q Right.

8 A And also attached to the third.

9 Q That's also corporate guarantee.

10 A Yes.

11 MR. OSHINSKY: Go off the record
12 for just a second.

13 (Whereupon, the above-entitled
14 matter went off the record at 10:06 a.m. and
15 resumed at 10:18 a.m.)

16 MR. OSHINSKY: We'll go back on
17 the record.

18 BY MR. OSHINSKY:

19 Q Okay. I want to remind you that
20 you're still under oath and other than being
21 tired, as you told me --

22 A Yes.

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1 Q -- from flying in, you're still
2 able to answer my questions truthfully and
3 correctly, to the best of your knowledge?

4 A That is correct.

5 Q Okay. I'd like to just go back a
6 little bit for a second and make sure that
7 we're clear about the ownership structure in
8 2000, of the company in 2000, at the point
9 where PCSI or PAI, the subsidiary, entered
10 into the Auction 34.

11 Okay. Let me ask you: Who did
12 the filings for -- to enter into the auction?

13 A Michelle Bishop and with the
14 assistance of David Kaufman, our FCC counsel.

15 Q Okay.

16 A And myself, but Michelle did all
17 the leg work in preparing the documents.

18 Q And was it Michelle or David
19 Kaufman who did the actual filing?

20 A Let's be specific here. Are you
21 talking about who -- who signed the document
22 or who submitted it to the FCC?

1 Q Okay. Who signed the document?

2 A I'd have to get -- I know, it --
3 give me a minute and let me see if I can
4 recall. I would say that Michelle submitted
5 it.

6 Q And what does --

7 A I'm pretty sure about that. At
8 the time -- you know, sometimes we would have
9 the attorneys submit things on behalf of us
10 and sometimes we would do it ourselves, and I
11 believe that -- I think Michelle submitted the
12 documents electronically to the FCC.

13 Q Electronically, is that right --

14 A I believe -- let me see, this is
15 2000 -- back in '98 it was sketchy in terms of
16 what you could file electronically, but by
17 2000 -- and the software to enter the auction
18 was, I think, considerably different than in
19 auction -- yes. So, yes, I believe she
20 submitted it electronically.

21 Q Okay. And that would be the Form
22 175?

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1 A The Form 175. That's correct.

2 Q Okay. And did you participate in
3 filling out the form?

4 A Very little, other than the -- I
5 was on the phone with her, with David, and
6 with Michelle to make sure that all the
7 information was correct and I was confident
8 that we had, you know, filled everything out
9 correctly and submitted it.

10 Q Okay. And at that point when the
11 175 was submitted, can you tell us what the
12 ownership structure was at that point, both
13 economic interest and voting interest?

14 A It would be the same numbers that
15 I gave you just before the break. They had
16 not -- I mean, I could be real specific if you
17 allow me to look at the documents that we've
18 provided you in the past, I could be --

19 Q That's fine. If you would just
20 let me know which document. Or do you mean
21 you need additional time for that?

22 A I would -- I mean, if you want in

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1 the record what the exact ownership is --

2 Q Well, I'll tell you what: Why
3 don't you supply that after the next break,
4 but can you tell me now? You gave me a fairly
5 detailed recitation of the ownership --

6 A Right. Well, you had the --

7 Q Could you tell me whether -- first
8 of all, you can tell me did it change at the
9 point where you submitted the 175? Was the
10 ownership interest different, both economic
11 and voting? Were they different in any way?

12 A From what --

13 Q Than what you described in '99.
14 Or, if it's easier, just tell me what they
15 were in 2000.

16 A I don't carry that knowledge in my
17 head.

18 Q Okay. Can you tell --

19 A I mean, to me, that -- to be that
20 specific.

21 Q You can give me approximately what
22 it was.

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1 A I'd have to go back and see what--
2 what preferred stock we sold at the -- in '99
3 and in 2000, and Chandu -- it wasn't
4 significantly different than what I shared
5 with you earlier in terms of voting.

6 I mean, you've had Jerry Setka --
7 you have myself, Jerry Setka. You had a
8 number of individuals that own a handful of
9 common shares representing a pretty small
10 percentage, and then you have the preferred
11 stockholders.

12 Q We could actually ask the court
13 reporter to read back just what you told us
14 about 1999.

15 If you could find it. The
16 ownership interest of the corporation in 1999.
17 And if you are going to tell me it's just the
18 same as what he tells us there, then that's
19 fine, too.

20 A Well, at the same time, I don't
21 want to --

22 Q Okay. Well, let's --

1 A You know, I don't want to --

2 MR. OSHINSKY: Are you looking?
3 We can go off the record for a minute while
4 you do that.

5 (Whereupon, the record was read
6 back by the reporter as above-recorded.)

7 MR. OSHINSKY: We're going back on
8 the record, and we have listened to Mr.
9 Austin's prior testimony about the ownership
10 interest and now you know.

11 BY MR. OSHINSKY:

12 Q Now, my question-- do you need me
13 to repeat it or can you just go ahead and
14 answer?

15 A What was the -- I believe the
16 question was --

17 Q The question is: What are the
18 economic and voting interest in 2000, just
19 prior or at the time where PAI, --

20 A Yes.

21 Q -- the subsidiary participates in
22 the --

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1 A Yes. The -- my voting stock was
2 77.78 percent, roughly 78 percent of the
3 voting stock and 50 -- roughly 55 percent of
4 the total equity. That's 54.97.

5 Jerry Setka -- I was a little off
6 on the numbers earlier. His voting was 19.9
7 and his equity was 14. I had him voting at 14
8 percent. It was 19.

9 And EMED Pharmaceutical had 14
10 percent of the total equity. It's all
11 nonvoting preferred stock. And then there's
12 -- I mean, those are the major pieces.
13 There's small little pieces, but --

14 Q Okay. And just so we don't have
15 to go through this ad nauseam, as the years
16 are going forward, can you tell us how the
17 ownership interest changed, if they did?

18 A Well, yes. It would change when
19 we would sell stock in the company. The --
20 now, the equity piece would change, but the
21 vote -- the vote stayed the same for a very
22 long -- very long period of time.

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1 Q Till when, approximately?

2 A In 2000 -- it stayed pretty
3 consistent. We haven't -- I'm just trying to
4 think of the common and, you know, we sold
5 some additional preferred shares that it
6 diluted it, and that would have been in 2005.
7 The equity would have changed a little bit in
8 2005.

9 Q Equity or -- I thought -- are you
10 talking about voting or equity in 2005?

11 A Yes, I'm saying the vote hasn't
12 changed --

13 Q Because of --

14 A Yes, and that is -- you know --

15 Q And so are the percentages that
16 you gave us true for today as well, currently?

17 A Well, we have -- we've submitted
18 what -- what the percentages are today or at
19 the point of the -- the last time you asked,
20 whenever that was.

21 Q Can you give them to us as you
22 understand currently? And I understand it may

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